Supreme Court, U.S.
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No. 98-1820

In The

Supreme Court of the United States

JAMES SPANGLER ET AL.,

Petitioners,

vs.

ALTEC INTERNATIONAL LIMITED PARTNERSHIP ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Was the court of appeals correct in its holding that the statute of limitations set forth in section 413(1)(a) of ERISA, 29 U.S.C. § 1113(1)(a), begins to run on *Varity*-type breach of fiduciary duty claims when the plaintiff detrimentally relies on the misrepresentation upon which his breach of fiduciary duty claims are based?

PARTIES TO THE PROCEEDING

Respondent Chart Industries, Inc. ("Chart") is publicly-traded over the New York Stock Exchange. Respondent ALTEC International Limited Partnership is a wholly-owned subsidiary of Chart.

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STATEMENT OF BASIS FOR JURISDICTION

A. Date of Judgment

The United States Court of Appeals for the Seventh Circuit entered the judgment at issue here on February 9, 1999. Petitioners filed a petition for rehearing with the Seventh Circuit, which was denied on March 12, 1999.

B. Jurisdiction

This is a discretionary appeal pursuant to 28 U.S.C. § 1254(1).

STATUTE AT ISSUE

ERISA section 413(1)(a), 29 U.S.C. § 1113(1)(a).

STATEMENT OF THE CASE

A. Procedural background

The Petitioners are 18 current and former employees of Respondent ALTEC International Limited Partnership ("ALTEC"). Petitioners (hereinafter referred to as the "Employees") worked for Plant 3 of the Trane Company's ("Trane") Brazed Aluminum Products Division in 1986, when it was sold to Arthur and Charles Holmes, principal stockholders of Appellee Chart Industries, Inc. ("Chart"), ALTEC's parent company. (Amended Complaint ¶ 49, Appendix of the Petitioners ("App.") at 61.) At that time, ALTEC was known as ALBRAZE International, Inc. ("ALBRAZE"). (Complaint ¶ 1, App. at 52.)

On May 13, 1997, the Employees filed suit in the United States District Court for the Western District of Wisconsin, asserting claims of breach of fiduciary duty under the Employee Retirement Income Security Act ("ERISA") section 404, 29 U.S.C. § 1104; for a declaration and enforcement of certain rights to which the Employees claim to have been entitled under employee benefits plans sponsored by ALTEC; and numerous state law claims. Jurisdiction was proper in the district court pursuant to ERISA section 502(e), 29 U.S.C. § 1132(e), which gives the United States District Courts exclusive jurisdiction over all actions relating to employee benefits plans. Respondents ALTEC and Chart, along with Respondent the ALTEC International Limited Partnership Pension Plan and Trust ~~for~~ Hourly Employees (the "Plan"), moved for summary judgment in their favor as to all claims asserted against them, with the exception of the vacation pay claims asserted by Employees David Goode, Dale Christianson, and Keith Huber.

On April 13, 1998, the District Court issued an Opinion and Order finding that the Employees' state law claims of fraudulent representation, breach of contract, intentional misrepresentation, negligent misrepresentation, and strict responsibility misrepresentation were preempted by ERISA. (*Spangler v. ALTEC Int'l Limited Partnership*, No. 97 C 0338 C, slip. op. at 7 (W.D. Wis. Apr. 13, 1998), App. at 18.) The District Court held that the Employees' claims for breach of fiduciary duty under ERISA were barred by the statute of limitations set forth in section 413 of ERISA, 29 U.S.C. § 1113, finding that "the last actions constituting the breach [of fiduciary duty] occurred in 1985 and 1986." (*Spangler*, No. 97 C

0338 C, slip. op. at 8, App. at 19.) The District Court further held that the Employees' estoppel and denial of benefits claims were based on alleged oral representations that contradicted the written terms of the Plan, and that Chart, ALTEC, and the Plan were therefore entitled to the entry of summary judgment in their favor on those claims.

The District Court denied Respondents' Motion for Summary Judgment with respect to the Employees' state-law based vacation pay claims. The District Court declined to retain jurisdiction over the Employees' remaining state-law claims, and those claims were dismissed.

The Court of Appeals for the Seventh Circuit affirmed the District Court's decision on February 9, 1999. The Seventh Circuit held that the last actions constituting a part of the Respondents' breaches of fiduciary duty occurred when the Employees acted in reliance on the alleged misrepresentations – namely, the Employees' transfers to employment with ALBRAZE/ALTEC in 1986 through 1988. (*Spangler v. ALTEC Limited Partnership et al.*, No. 98-2437, slip op. at 7 (7th Cir. Feb. 9, 1999), App. at 7-8.) The Seventh Circuit's analysis differed somewhat from the District Court's in this respect: the District Court had held that the last action constituting a breach occurred in 1986 when the alleged misrepresentation occurred. Petitioners filed a petition for rehearing by the Seventh Circuit, which was denied on March 12, 1999. (App. at 11.)

B. Factual Background

The material facts of this case are not in dispute. All facts were construed in Petitioners' favor by the trial court and court of appeals.[1] The following factual summary was derived primarily from the Petitioners' depositions and their responses to Respondents' interrogatories and document production requests.

The Employees worked for Trane Plant 3 when it was purchased by Arthur and Charles Holmes, Chart's principal stockholders. The Employees claim that they were induced to leave their jobs as Trane welders and accept employment with ALBRAZE, now known as ALTEC, with the promise that they would *"not lose anything"* from their Trane benefits. (*Spangler v. ALTEC Int'l Limited Partnership*, No. 98-2437, slip op. at 1-2 (7th Cir. Feb. 9, 1999), App. at 2-3.)

1. The Employee "Loan" Agreement

In negotiating the purchase of Trane Plant 3, Mr. Holmes struck an agreement with Trane whereby Trane agreed to loan the majority of its personnel who worked in the Plant, including the Employees, to ALBRAZE for at least two years. (*Id.*; App. at 2-3.) During the loan period, the loaned individuals were to remain employed by

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[1] The Petitioners statement of facts has become more and more exaggerated as this case has progressed through the judicial system. Petitioners have grossly misstated the evidence that has been adduced in this case. As it happens, however, these misstatements are of no consequence to the determinant issues of the case.

Trane, and would retain all their seniority and benefits with Trane. (*Id.*; App. at 2-3.)

ALTEC representatives began attempting to persuade the Employees and the other Plant 3 workers scheduled to be loaned to ALTEC to leave their employment with Trane and work permanently for ALTEC. The Employees assert that they relied on statements made in one or more meetings, held over ten years ago, to support their claims in this case that they were told they would "not lose anything" from their Trane benefits. (*Id.* at 3; App. at 3.)

The Seventh Circuit held that the Employees actually *did not lose anything* in terms of their Trane pension benefits by going on loan and eventually transferring their employment to ALTEC. All of the Employees were vested in their Trane pensions, meaning that each Employee's Trane pension benefits were non-forfeitable. *See* ERISA § 203(a); 29 U.S.C. § 1053(a); *Spangler*, No. 98-2437 at 3, App. at 3. The Employees' pension claims in this action are based upon the fact that, *after the Employees left their employment with Trane*, Trane increased its pension multiplier. The Employees asserted with this lawsuit that ALTEC should contribute to the Employees' pensions for their years of service at *Trane*. The Employees want ALTEC to make up the difference between the pension multiplier per month per year of service that was offered at the time they left Trane ($16.00 or $17.00, depending upon the date of each Employee's retirement from Trane) and the pension multiplier that is now offered at ALTEC. (*Spangler*, No. 98-2437 at 3-4; App. at 3-4.)

2. The Employees Were Given Numerous Documents Regarding ALTEC's Benefits Program

The Seventh Circuit upheld the District Court's finding that, in 1986, the Employees were given numerous documents that detailed the exact scope of ALTEC's benefits program. The documents made clear that only years worked for ALTEC would be used in calculating pension benefits. (*Id.* at 4; App. at 4.) Nevertheless, the Employees claim that not until October 1994 did they realize that their pensions from ALTEC would be different from what they expected. The Employees filed suit in May of 1997. (*Id.* at 4; App. at 4.)

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

Contrary to Petitioners' representations, the Seventh Circuit's decision holding that the Employees' claims were barred by the ERISA statute of limitations set forth in ERISA section 413(a), 29 U.S.C. § 1113(a), is consistent with the decisions of this Court and other courts of appeal and is equitable. The Seventh Circuit decided this case correctly in a well-reasoned, lengthy opinion. No conflict exists in the circuits on the issue presented by this case. In short, there is absolutely no reason for this Court to exercise its discretion to review this case.

In fact, not one of the cases cited by Petitioners in their brief actually provides support for Petitioners' claims that the Seventh Circuit's decision conflicts with prior decisions of this Court or other courts. Even more conspicuous is the Petitioners' total failure to address any

of the cases relied upon by the Seventh Circuit in its decision below.

The ERISA statute of limitations requires that breach of fiduciary duty claims must be brought before the earlier of six years after the date of the last action constituting a breach *or* three years from the date a plaintiff has actual knowledge of the breach. The undisputed facts indicate (and the Seventh Circuit correctly concluded) that the last action constituting a part of any breach of fiduciary duty by the Respondents occurred in 1988 at the latest, more than six years before the Employees filed suit in the District Court (1997). The date the Employees were denied the benefits they claim to be due would only be relevant to an analysis of a contractually-based right to benefits claim. Petitioners did not appeal the District Court's decision on their contractual denial of benefits claims, which were properly dismissed because they conflicted with the written Plan terms.[2]

ERISA's Statute of Limitations

ERISA limits the time in which an action against a plan fiduciary for breach of fiduciary duty may be brought. It provides as follows:

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[2] Under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), a claim for denial of benefits may only be brought in order to enforce rights due to a participant or beneficiary under the written terms of a plan. The alleged misrepresentations upon which the Employees' denial of benefits claims were based conflicted with the express written terms of the Plan, and the District Court correctly held that Respondents were entitled to judgment in their favor on these claims.

> No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of – (1) six years after (A) the date of the last action which constituted a part of the breach or violation, (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or (2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

ERISA § 413, 29 U.S.C. § 1113.

Despite the numerous documents that ALTEC distributed to the Employees over the years, the Employees nevertheless claim that they did not have knowledge of any discrepancy between the benefits they expected, under the terms of Trane's plan, and the benefits they actually were to receive under the ALTEC Plan, until sometime in 1995. The Employees' actual knowledge or lack thereof aside, the Employees' claims are barred by the six-year statute of limitations in ERISA section 413(1)(A), 29 U.S.C. § 1113(1)(A).

The Seventh Circuit correctly held that the last act that constituted a part of the alleged breach of fiduciary duty – the Employees' decisions to transfer their employment from Trane to ALTEC/ALBRAZE – occurred in 1988 at the latest. Since more than six years passed between the last action constituting a part of the alleged breach of fiduciary duty and the filing of the Employees' lawsuit

with the District Court, the Employees' claims are barred by ERISA's statute of limitations.

1. The Employees' Cause of Action Arose in 1988 at the Latest and is Time-Barred.

The Seventh Circuit correctly concluded that a plaintiff alleging intentional misrepresentation has a viable cause of action when he or she acts in reliance on the misrepresentation. *See Librizzi v. The Children's Memorial Medical Center*, 134 F.3d 1302, 1307 (7th Cir. 1998). In *Librizzi*, the plaintiff filed suit based upon bad advice he received regarding his eligibility for disability benefits. The Seventh Circuit held that the "breach or violation" occurred when the bad advice was given or, at the latest, when the defendant failed to provide accurate information in time to affect the plaintiff's irrevocable election, which was made in January of 1991. As such, the plaintiff's claims were properly found to be time-barred. *Librizzi*, 134 F.3d at 1306.

The timing of any injury caused by the alleged misrepresentations is irrelevant. Courts examining analogous situations have concluded that an injury need not be felt in order for a breach of fiduciary duty to be complete. For example, in *Larson v. Northrop Corp.*, 21 F.3d 1164, 1170 (D.C. Cir. 1994), a decision relied upon by the Seventh Circuit, the Court concluded that the plaintiff's ERISA cause of action accrued when the plan sponsor purchased an insufficient annuity for plan funding purposes, rather than when the plaintiff's claimed benefits were denied. In *Gluck v. Unisys Corp.*, 960 F.2d 1168, 1178-79 (3d Cir. 1992), the Third Circuit held that the plaintiffs' claims accrued

when the employer passed an improper plan amendment, rather than when the defendant refused to pay the benefits at issue.

The Seventh Circuit has already concluded that the plaintiffs' suit was time-barred in an action with facts similar to those in this case. In *Wolin v. Smith Barney, Inc.*, 83 F.3d 847 (7th Cir. 1996), the plaintiffs were trustees of an ERISA plan who sued their investment advisor on the basis that recommended investments were unsafe when the advisor had assured the plaintiffs that the investments would be safe and liquid. The documents introduced as evidence in the case conveyed unmistakably that the investments were risky and illiquid. *Id.* at 850-51. The investment advisor's assurances were the alleged wrongdoing. The court concluded that the timing of the plaintiffs' injury was not indicative of when their suit should have been brought. *Id.* at 854.

Here, the Employees' irrevocable elections occurred in 1988 at the latest when they decided to transfer their employment to ALTEC. The Employees' transfer decisions, in reliance upon the alleged misrepresentations, occurred in 1988 at the latest. As the Seventh Circuit held below, under its own decision in *Librizzi*, and under the decisions of all of the courts that have examined this issue, the Employees' breach of fiduciary duty claims are clearly time-barred because the limitations period began to run on the date of the last action constituting a part of the breach, not on the date the Employees felt the effects of the action. *See id.*; *accord Larson v. Northrop Corp.*, 21 F.3d at 1168 ("It is ridiculous to suggest that the operation of the statute of limitations must depend on [p]laintiff's age and when he feels like retiring.").

2. The Cases Cited By The Employees Do Not Support Their Claim That Their Causes of Action Accrued in 1994.

Petitioners make no attempt to distinguish the cases cited and analyzed by the Seventh Circuit in reaching its decision. Not one of those cases is addressed in Petitioners' brief. Instead, Petitioners present a number of cases, including this Court's decision in *Varity v. Howe*, 116 S.Ct. 1065 (1996), that in reality lend no support whatsoever to their claims.

Petitioners assert that *Varity* lends support to their attempt to characterize their breach of fiduciary duty claims as a denial of benefits in order that their causes of action might accrue when the claimed benefits were denied, rather than when the alleged misrepresentations were made or when the Petitioners acted in reliance on those representations. In reality, *Varity* does nothing to support Petitioners' claims. Petitioners' argument that *Varity* recognizes a breach of fiduciary duty when claimed benefits are denied misconstrues the holding of that case and is a blatant attempt to resurrect their abandoned denial of benefits claims. *Varity* did not even address the statute of limitations on ERISA actions, and nothing in Petitioners' brief demonstrates how *Varity* provides any support for their claims.

Next, Petitioners cite *Meagher v. International Ass'n of Machinists and Aerospace Workers Pension Plan*, 856 F.2d 1418 (9th Cir. 1988), for the proposition that their claims began to run with the issuance of each check that was not in accordance with the benefits Petitioners expected. This analysis must fail. *Meagher* was quite clearly a denial of

benefits case in which the plaintiff sought to recover benefits to which he was entitled under his benefits plan's written terms. *Id.* at 1422-23. *Meagher* is readily distinguishable from the facts presented by the Employees: *nothing* in the terms of the ALTEC Plan indicates that the Employees are entitled to the benefits they claim. To the contrary, as the Seventh Circuit recognized, the Plan's terms expressly indicate that the Employees are entitled to receive a pension only for their years of service at ALTEC.

Petitioners also cite another denial of benefits case, *Starr v. JCI Data Processing Inc.*, 767 F. Supp. 633 (D. N.J. 1971), to support their claim of a conflict in the circuits. First and foremost, a district court case does not demonstrate a conflict in the circuits. In any event, even if *Starr* had been an appellate decision, Petitioners' arguments are misplaced. *Starr* involved claims for denial of benefits and failure to provide requested information to plan beneficiaries. *Id.* at 636. The district court concluded that the defendant breached its fiduciary duties annually each year that it failed to comply with ERISA's provisions. However, the plaintiffs' claims that occurred more than 6 years before his complaint was filed were held to be time-barred. *Id.* at 638.

Had Petitioners read the entirety of the next case they cite, *Ziegler v. Connecticut General Life Ins. Co.*, 916 F.2d 548, 552 (9th Cir. 1990), they would have realized that a breach of a fiduciary duty does not require that actual harm to the plaintiff result before a plaintiff's cause of action accrues. The *Ziegler* court wrote:

> [N]ot all ERISA actions for breach of fiduciary duties require an occurrence of harm before they will accrue. Indeed, the statute of limitations on ERISA actions such as [the plaintiff's] includes no requirement of actual harm. . . . Thus, it was unnecessary to await an actual injury or harm before the ERISA violation became actionable. . . .

Id. at 550-51.

3. Petitioners' Trust Law Analysis Lends No Support To Their Claims.

Petitioners devote several pages of their Petition to quote from *The Restatement of Trusts* and *Corpus Juris Secundum* and to discuss fraud cases. Neither the District Court nor the Seventh Circuit relied on these treatises to support their decisions. That, however, did not serve to deter the Petitioners from a lengthy discussion attempting to support their viewpoint with these authorities.

Petitioners' trust law analogy is apparently in response to *Varity's* conclusion that the federal common law of trusts should be applied to fill in any gaps not addressed by ERISA. This analysis completely ignores the fact that ERISA sets forth a statute of limitations that is directly applicable to the Employees' claims. As a result, there is no need for this Court to turn to the law of trusts to resolve the issues presented by this case.

4. The Court of Appeals' Decision Promotes Equitable and Just Results.

Petitioners' argument that they had no way of knowing the status of their pension benefits until they began receiving pension checks completely ignores the fact that ALTEC distributed *numerous* documents, from 1986 on, setting forth the fact that Petitioners' ALTEC pensions would be based on their service with ALTEC only. Their claim that the Seventh Circuit's decision is inequitable implies that plaintiffs should be able to ignore completely any and all written plan documents distributed to them and wait until their retirement to pursue a cause of action based upon alleged oral statements that conflict with the plan documents. Such a result was clearly not intended by Congress, which intended to promote disclosure and clarification of benefits plans when it enacted ERISA. ERISA § 2 (a), 29 U.S.C. § 1001 (a).

Finally, policy considerations dictate that the Seventh Circuit's analysis was correct. No other rule would make sense. Holding otherwise would mean that a plaintiff could hear a representation, retire thirty years later, and still file suit based upon an alleged misrepresentation that was made decades prior. No statute of limitations would ever run under such an analysis. This Court should decline Petitioner's invitation to promulgate such a rule.

CONCLUSION

The Seventh Circuit's decision affirming summary judgment in the Respondents' favor on the Employees' ERISA-based breach of fiduciary duty claim was proper

and in accordance with applicable law. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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